

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

SOCAL ACCESSORY PRODUCTION

Employer

Inspection No.

1171175

**DENIAL OF PETITION FOR
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Socal Accessory Production (Employer).

JURISDICTION

Commencing on August 18, 2016 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On February 3, 2017, the Division issued five citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer timely initiated its appeals on February 8, 2017.

The Board provided a Notice of Incomplete Appeal (Notice) to Employer on February 8, 2017 that its appeal was incomplete, and that Employer had 20 calendar days from the date of service of the notice to provide required information. No response was received.

Accordingly, on March 17, 2017 the Board's Executive Officer issued an Administrative Order Dismissing Appeal (Order).

Employer/Division untimely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

Does the Board have jurisdiction to grant reconsideration?

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer's petition consists of only the citation package the Notice informed Employer it needed to submit in order to complete its appeal. The failure timely to submit the citation package cannot be cured by sending it as or as or even with a petition for reconsideration. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43.) Moreover, Employer's petition fails to state any of the bases set forth in Labor Code section 6617 above, which is grounds sufficient to deny the petition. (*UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009), citing, *Bengard Ranch, Inc.*, Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).)

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Order was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

As noted above, the Board issued and served the Order electronically on Employer on March 17, 2017. Employer had until April 21, 2017 to file a petition for reconsideration. (Lab. Code § 6614, subd. (a).) Employer filed its petition electronically on May 2, 2017, eleven days late.

We lack jurisdiction to grant reconsideration of a late-filed petition. (*California Construction Consultants, Inc.*, Cal/OSHA App. 13-2122, Denial of Petition for Reconsideration (Sep. 8, 2016), citing *Nestle Ice Cream Co., LLC v. Workers' Compensation Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; *Scott v. Workers' Compensation Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

In addition, there were other fatal defects with the petition. It consists solely of a copy of the citation package. There is no other text or statement indicating the reasons, grounds, or details for to support the petition. Those shortcomings would be fatal to the petition even if the Board had

jurisdiction. (See Labor Code §§ 6616, 6617.) Finally, Employer did not provide proof that it had served its petition on the Division as required. (Lab. Code § 6619.)

DECISION

For the reasons stated above, the petition for reconsideration is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Art R. Carter, Chairman
Ed Lowry, Board Member
Judith S. Freyman, Board Member

FILED ON: 06/16/2017

